

# EXHIBIT 35



Deposition of:  
**Daniel Smith , Ph.D.**

*January 28, 2020*

In the Matter of:  
**Fair Fight Action, Inc., Et Al. Vs.  
Raffensperger, Brad, Et Al.**

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1 style.

2 Q. And of that subset of absentee votes, you  
3 found a white voter rejection rate of 2.3 percent and a  
4 black voter rejection rate of 3.7 percent?

5 A. Yes, that's correct.

6 Q. And you note that the rejection rate for black  
7 voters is nearly 65 percent higher than the rejection  
8 rate for white voters, correct?

9 A. Yes.

10 Q. And unless I missed somewhere, you're not  
11 really opining about why that is, you're just pointing  
12 out that it is; is that correct?

13 A. Again, I think that's correct. I'm letting  
14 the data speak for themselves.

15 Q. And did you conduct any sort of analysis to  
16 determine whether these results could be equally  
17 explained by chance, any sort of progression or any  
18 analysis on that front?

19 A. I'm really kind of opposed to that type of  
20 analysis because this is actually the administrative  
21 data of record.

22 And so I have stayed away in this table and  
23 from doing that type of analysis because I can, on the  
24 face of it, say that not only is 3,162 greater than  
25 2,468, I can also say that of those who cast mail-in

1 ballots, with the mail-in ballot style, who were black,  
2 have 3.72 percent rejected as opposed to the same  
3 category for whites, at 2.26.

4 And I can say with certainty that it's 60 some  
5 odd percent greater, and I can say with certainty it's  
6 about one and a half percent greater.

7 There's no need for progression. This is not  
8 a sample. This is the raw data from, presumably, the  
9 official results coming from the State of Georgia.

10 Q. Again, obviously, a variety of factors that  
11 can influence an acceptance and rejection.

12 Did you look at all whether any of these  
13 voters rejections, were they first time voters, were  
14 they experienced voters, did you conduct any analysis on  
15 those other factors?

16 A. No, I did not.

17 Q. And if there was a particular campaign that  
18 had a heavy absentee ballot focus on African-American  
19 voters, for example, and got a disproportionately high  
20 number of first time African-American voters voting  
21 absentee, you would expect to see higher rejection rate,  
22 wouldn't you?

23 A. Again, it depends. There is certainly  
24 evidence out there suggesting younger voters may be more  
25 predisposed to have a rejected absentee ballot than

1 those more veteran. But no, I did not conduct that type  
2 of analysis.

3 Q. And in Table 2 it looks like the rejection  
4 rate for Hispanic and Asian voters was higher than the  
5 rejection rate for white or black voters; is that right?

6 A. Yes, according to the data that I have.

7 Q. And the other category refers to other racial  
8 categories, or does that include the unknown racial  
9 category?

10 A. I think the unknown is the NA, yeah. So other  
11 is an official category in the voter file, if I recall  
12 correctly. Or it's all those that are not -- all those  
13 that have a race that are not white, black, Hispanic,  
14 Asian. In fact, Georgia differentiates between race and  
15 ethnicity, so I'm sure that I conditioned on all that.  
16 These would be the residuals with the race. The NA are  
17 the ones that have no information.

18 Q. So in paragraph 47, you then seek to visualize  
19 this and looked at the percentage of absentee ballots  
20 cast by black voters and the percentage of absentee  
21 ballots cast by black voters that were rejected,  
22 correct?

23 A. Correct.

24 Q. And you see, obviously, on Figure 1 it's a  
25 wide distribution, a lot of dots in a lot of different

1 level variables and model this differently.

2 Q. Now, based on what you found in the rejection  
3 rate in Figure 1, you're not saying that local election  
4 officials are engaged in intentional racial  
5 discrimination against African-American voters, are you?

6 A. No, absolutely not. Again, I'm not imputing  
7 or impugning motive here.

8 What this plot does, which, I mean, I could  
9 have easily just provided a table, but tables with 159  
10 cases get unwieldy, I could have easily done that so you  
11 could compare black and white percentage of absentee  
12 ballot cast, and black and white rejection rates of  
13 those absentee ballots cast.

14 County name, 159, and four columns of data,  
15 it's really difficult to visualize from that the pattern  
16 that I think is quite clear from this figure as well as  
17 the Figure 2, and that is there is a lot of  
18 heterogeneity; meaning there's a lot of counties that  
19 those have very few blacks who voted an absentee ballot,  
20 such as Pickens, that have a very high rejection rate.

21 You have others that I don't have labeled that  
22 have less than 10 percent that didn't have many absentee  
23 ballots cast by blacks rejected, you know, less than 3  
24 percent, less than the statewide average, right.

25 So there's a lot going on there with respect

1 to rejection rates of absentee ballots cast by blacks  
2 that this plot is trying to represent. The regression  
3 relation line merely suggests that the relationship is  
4 positive in that bivariate sense.

5 Q. When you say a relationship is positive in a  
6 bivariate sense, is that just basically saying these two  
7 variables are somehow related but we're not sure how?

8 A. Sure. They're correlated in this fashion.  
9 It's not -- it's not excluding all other possible  
10 factors, as we have already discussed.

11 Q. And have you seen situations in past modeling  
12 of datasets where a bivariate regression would show a  
13 relationship and multivariate would not?

14 A. Yeah, sure. Again, I've got working papers on  
15 absentee ballot rejection rates from Florida, for  
16 instance, in which it has a bivariate relationship that  
17 is positive, and I have thrown every possible control  
18 variable known to mankind because I've got two some  
19 million observations; their age, their past vote  
20 history, their gender, whether they have a hyphenated  
21 last name, whether they have an apostrophe in their  
22 name, as well as what we would call county fixed  
23 effects, what the party is of the supervisor in Florida,  
24 what the support was for the republican candidate in the  
25 county and the racial relationship still holds. It

1 still holds.

2 So this is a very simple bivariate  
3 relationship that I have plotted here. I'm not saying  
4 that throwing everything in the kitchen sink into a  
5 model won't have this same relationship hold. I didn't  
6 do it.

7 Q. Okay. And in paragraph 48 you reference about  
8 40 percent of all mailed absentee ballots cast in  
9 Gwinnett, nearly 8 percent were rejected, the ones cast  
10 by black voters.

11 Are you aware of Gwinnett County being in the  
12 news for its rejection rate of absentee ballots  
13 generally?

14 A. Yes.

15 Q. And again, you're not saying that that  
16 rejection was racially motivated, correct?

17 A. From what I read in the papers, there were  
18 other issues with ballot design or absentee ballot  
19 envelope design.

20 Q. Going to Figure 2, I guess this is not quite  
21 the inverse of the prior dataset, but could you just  
22 walk me through it a little bit how Figure 2 differs  
23 from Figure 1?

24 A. You're absolutely right, it is quite not the  
25 inverse, and that's because these are looking at the



1 have it who aren't able to overcome or don't have  
2 the assistance to have remedies, I don't think  
3 there's any intrinsic bias one way or the other.  
4 I'm just an empiricist that is interested in  
5 looking at these relationships.

6 BY MR. TYSON:

7 Q. I believe you mentioned earlier that you read  
8 the complaint in this case or are generally familiar  
9 with the allegations in the case.

10 A. I have no idea how many complaints or amended  
11 complaints or whatever. I'm sure I read one complaint  
12 at some point long ago. I have no idea when this  
13 litigation even started. It may be a year old as far as  
14 I know, so it may have been a year ago that I read  
15 through that complaint. But yes, I am familiar with the  
16 complaint.

17 Q. And in the political science field, are you  
18 familiar with the term "vote suppression" or "voter  
19 suppression"?

20 A. Yes.

21 Q. And how would you define that term?

22 A. It's a term that I generally try to stay away  
23 from. It's one that, from my perspective, carries more  
24 baggage than its utility.

25 I'm interested in how rules and institutions

1 affect behavior. That's what has driven me since I was  
2 working on organized labor and these labor management  
3 groups in Wisconsin and other states to direct democracy  
4 campaigns and whether or not they actually led people to  
5 turn out to vote because they were interested in ballot  
6 issues as opposed to Republicans for Democrats. It's  
7 the same thing that animates my research now, looking at  
8 institutional variation changes and how it affects  
9 different populations from turning out to vote.

10 Voter suppression, to me, if I've used it,  
11 it's something that I don't see a lot of utility in  
12 because it kind of gets to intent. When I do use it,  
13 it's more with respect to expressive comments made where  
14 it's clearly designed to reduce the likelihood of  
15 certain populations to vote.

16 And so I hope that I have been, in my own  
17 academic research, circumspect with respect to that  
18 term.

19 Q. Do you consider vote suppression as a term, a  
20 partisan term in the political science world?

21 A. I think it's become a partisan term, just like  
22 voter fraud has become a partisan term. Again, I don't  
23 find either of those terribly useful as a political  
24 scientist. Again, that I've used those terms, hopefully  
25 they're in the context of other political actors who are

1 using them.

2 But again, has it become a partisan term, I  
3 think there's a lot of evidence to suggest it has. Just  
4 like people who cry there's a lot of voter fraud. Two,  
5 3 million fraudulent votes cast seems to become a  
6 partisan term.

7 And from my perspective, again, as a scholar  
8 and a scholar first who has a long record and one that  
9 I'm very proud of, those terms don't do a lot for me as  
10 an academic. That I might have a Tweet out there "The  
11 fraudulent fraud squad", it's a Tweet.

12 My reputation, I hope, is more than my Twitter  
13 profile.

14 MR. TYSON: I think we can all hope for that.  
15 We can go off the record.

16 (Discussion off the record.)

17 MR. TYSON: All right. Dr. Smith, thank you  
18 for your time today. I don't have any further  
19 questions for you.

20 MR. KAISER: We've got no questions.

21 (Discussion off the record.)

22 THE COURT REPORTER: And are you ordering?

23 MR. TYSON: Electronic, yes.

24 THE COURT REPORTER: PDF?

25 MR. TYSON: Yes.